

# EXHIBIT D

**MORRISON | FOERSTER**

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June 1, 2021

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Re: *Donna Curling, et al v. Brad Raffensperger et al.*, No. 1:17-CV-2989-AT  
(N.D. Ga.)

Dear Bryan:

I write regarding outstanding discovery issues.

### **Defendants' Suggested Search Terms**

Thank you for sending the proposed search terms in your letter. While we understand these terms were used in pending litigation against the State of Georgia, and they may provide a helpful starting point, we do not think they map precisely to the scope of discovery we need. We therefore request the following terms, which contain only modest additions to your proposal:

- ((election\* OR vot\*) AND (review\* OR analy\* OR examin\* OR evaluat\* OR stud\* OR assess\* OR test\*)) AND (error! OR malfunction! OR broke\* OR break\* OR discrepant\* OR glitch! OR "switch\* votes" OR hack\* OR compromise\* OR breach\* OR provisional OR "express poll" OR "poll pad" OR incorrect OR wrong)
- ("Center for Elections Systems" OR Kennesaw OR server\*) AND (wipe\* OR destroy\* OR repurpos\* OR reus\* OR eras\* OR delet\* OR spoliat\* OR hack\* OR overwr\* OR breach\* OR vulner\* OR compromise\*)

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- (pollbook OR “poll book” OR e-poll\*)
- (express OR “check-in” OR “check in” OR “checkin” OR “certificate\*” OR “ID card\*” OR “smart card”\*)
- (secur! /4025 (breach\* OR assess\* OR test\* OR examin\* OR evaluat\* OR analy\* OR stud\*))
- (secur! /525 (vulner\* OR glitch\* OR fail\* OR compromise\* OR hack\*))
- (audit AND (process\* OR data\* OR result\* OR elect\* OR vot\* OR unreliab\* OR reliab\* OR fail\* OR inconclusive))
- (“voting machine\*” OR DRE OR DREs OR “direct recording” OR “ballot marking” OR “ballot-marking” OR BMD OR BMDs)
- (“voting machine\*” AND Dominion AND (fail\* OR error! OR malfunction! OR broke\* OR break\* OR glitch! OR hack\* OR compromise\* OR breach\* OR unreliab\* OR reliab\*))
- (“Poll Pad\*” AND KnowInk AND (fail\* OR error! OR malfunction! OR broke\* OR break\* OR glitch! OR hack\* OR compromise\* OR breach\* OR unreliab\* OR reliab\*))
- (“machine\*” OR DRE OR DREs OR “direct recording” OR BMD OR Dominion OR touchscreen) /525 (error! OR malfunction! OR broke\* OR break\* OR discrepant\* OR glitch! OR “switch\* votes” OR president\* OR hack\* OR compromise\* OR breach\* OR unreliab\* OR reliab\*)
- ((complain\* OR violat\* OR report\*) w/4025 (candidate OR elect\* OR primar\* OR ballot OR vot\* OR precinct OR poll OR count or machine OR superintendent OR registrar OR missing))
- ((transfer\* OR shar\* OR send\* OR reus\* OR repurpose\*) AND (media OR air-gap OR airgap OR server\* OR data OR USB\* OR thumb\* OR disc\* OR disk\* OR CD\* OR DVD\*))

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- ((voting /3 machine\*) OR Dominion OR BMD\* OR OR “ballot marking” OR “ballot-marking” OR “barcode” OR “QR code”) AND ((verif\* OR “human-readable” OR ((read OR confirm OR check OR review) /3 vot\*))

We understand the above search terms to use root expanders “!” and “\*” to capture variations of the terms, but it is unclear what the difference between them is, if any. To be clear, in each instance where a root expander is used, it should be an unlimited expander—not a single character or other limited expander. Please confirm.

### **Defendants’ Custodians**

Thank you for confirming the following custodians:

1. Brad Raffensperger
2. Ryan Germany
3. Chris Harvey
4. Merritt Beaver
5. Michael Barnes
6. Blake Evans
7. Kevin Rayburn
8. Jordan Fuchs
9. David Hamilton

Please add the following individuals to those listed above:

10. Brian Kemp (for the period he served as Secretary of State)
11. Gabriel Sterling
12. David J. Worley
13. Rebecca N. Sullivan
14. Matthew Mashburn
15. Anh Le
16. Seth Harp
17. Ralph F. Simpson
18. Sara Ghazal

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Your letter indicates only that you will run the proposed search terms across the Exchange mailboxes of these custodians. That is not sufficient. Please confirm you will perform these searches across all machines, devices, media, and other data sources used for work purposes including but not limited to employee desktops, laptops, shared repositories, personal devices, and removable media, whether located in the office or at home or elsewhere. Please confirm that you will collect and produce all responsive information and materials from all sources and repositories in your clients' possession, custody, or control.

In addition, it has come to our attention that Chris Harvey—one of the above agreed-upon custodians and one of only three individuals listed in your initial disclosures as having relevant information—is leaving his position as Georgia's elections director. Please confirm that Mr. Harvey's documents, electronic files, and all other potentially relevant communications and materials are being and will continue to be preserved.

Lastly, your initial disclosures are obviously incomplete with respect to identifying individuals and other sources of potentially relevant information. Again, you have identified only three individuals. Please provide a complete list of individuals and other sources of potentially relevant information by close of business Thursday, June 3, 2021. We reserve the right to add custodians and search terms once we receive proper initial disclosures and other long-overdue discovery in this case.

### **Plaintiffs' Depositions**

We understand from our last meet-and-confer that you have reversed course and no longer wish to depose any of our clients right away; you instead will await completion of their respective document productions and look to depose them no sooner than next month. If we have misunderstood, please let us know. Otherwise we will look at their availability in the months of July and August.

### **Defendants' Responses to Requests for Production**

***Request for Production Nos. 24-33, 35.*** On November 20, 2020, Plaintiffs requested information regarding any Pro V&V audit ordered, proposed, or

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requested by the Secretary of State's office. Your responses of December 7, 2020 indicated an agreement to produce relevant, non-privileged material responsive to this request, but we have received none. Please produce all responsive documents this week.

Your objections to several of these requests indicate that you intend to withhold documents on the basis of attorney-client privilege. There does not appear to be an appropriate privilege claim for these requests. For example, Request No. 31 asks for documents identifying all individuals involved in the Pro V&V audit process, from preparation to report. Your response states that you will produce non-privileged documents if any exist, which suggests you misunderstand the request. The identity of individuals involved in the audit is an underlying fact that cannot be protected by the attorney-client privilege. Not only are Plaintiffs entitled to information regarding these individuals, you should have already identified them as relevant in your initial disclosures, as noted above. So that we may evaluate the validity of any privilege claims, please provide a privilege log on a timely basis in accordance with Rule 26(b)(5) and the directives from the Court in the Fair Fight litigation where it appears State Defendants improperly withheld tens of thousands of documents as privileged. We note that we have not received any such log to date in this litigation.

With only a month until Plaintiffs submit initial expert reports, we need your production completed quickly to incorporate responsive materials into these reports. Please confirm that you will produce all responsive documents and data no later than June 15 and will do so on a rolling basis.

Sincerely,

*/s/ David Cross*

David Cross

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